

BOROUGH OF CHAMBERSBURG,

Plaintiff

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1813,
PATRICK R. MARTIN, and SCOTT MCNEW

Defendants

: IN THE COURT OF COMMON
: PLEAS, FRANKLIN COUNTY,
: PENNSYLVANIA

v.

: CIVIL ACTION – LAW

: DOCKET NO. _____

COMPLAINT

AND NOW COMES the Plaintiff, Borough of Chambersburg, and sets forth the following Complaint:

Parties

1. Plaintiff is the Borough of Chambersburg (hereinafter “Plaintiff” or “Borough”), a municipal corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with a principal address of 100 South Second Street, Chambersburg, Pennsylvania, 17201.

2. Defendant International Association of Firefighters, Local 1813 (hereinafter “Defendant Union”), is the exclusive bargaining agent of all career firefighters working for the Borough of Chambersburg, with a principal address of 130 North Second Street, Chambersburg, PA 17201.

3. Defendant Patrick R. Martin (hereinafter “Mr. Martin”) is an employee of the Borough and is the President of the Defendant Union and a shift captain in the Chambersburg Fire Department.

4. Defendant Scott McNew (hereinafter “Mr. McNew”) is a paid firefighter in the

Chambersburg Fire Department and Vice President of Defendant Union.

Introduction

5. The Defendants have directed volunteer firefighters to stop responding to fires in the Borough of Chambersburg and thereby placed Borough residents and businesses in immediate peril. This action seeks preliminary injunctive relief, under Pa.R.Civ.P. 1531, to require the Defendants to cease encouraging, sanctioning, and supporting a secondary boycott of volunteer fire fighting services of the Chambersburg Fire Department, in violation of the collective bargaining agreement existing between Plaintiff and Defendant, contractual agreements between the Borough and third parties, and Section 6(2)(d) of the Pennsylvania Labor Relations Act, 43 P.S. § 211.6(2)(d).

Fire Protection in the Borough-Professional and Volunteer Components

6. The Chambersburg Fire Department is composed of both paid and volunteer firefighters. See Code of Borough of Chambersburg, §§30-1, 2. ("The Chambersburg Fire Department, under the supervision of the Emergency Services Chief, combines volunteers and career personnel to provide fire prevention/suppression and emergency medical services.")

7. Volunteer firefighters are an integral part of the Chambersburg Fire Department and are essential to firefighting activities in the Borough. *Id.* The CBA, described *infra* at paragraph 20, also specifies that volunteers are part of the Borough's Fire Department. See CBA, Paragraphs 23 and 24.

8. The Borough has four volunteer fire companies that are a part of the Chambersburg Fire Department: Junior Hose and Truck Company Number 2; Goodwill Fire Company Number 3; Franklin Fire Company Number 4 (hereinafter the "Franklins"); and Cumberland Valley Fire Company Number 5.

9. Many of the volunteers who provide volunteer firefighting services to the Borough are IAFF members, working as paid firefighters in other jurisdictions. Specifically, twenty-one (21) of the active members of the Franklins are IAFF members due to being paid firefighters in other jurisdictions.

10. Mr. Martin is the President of the Defendant Union and is a shift captain in the Chambersburg Fire Department.

11. Mr. Martin, as a shift captain in the Chambersburg Fire Department, is responsible for the control, management and direction of all career and volunteer firefighters assigned to his shift.

12. When volunteer firefighters arrive on a fire scene, they report to, and work under, the authority of the shift captain.

The Collective Bargaining Agreement

13. The Plaintiff and Defendant Union began bargaining for a new collective bargaining agreement on June 29, 2011.

14. On July 25, 2011, Plaintiff sent Defendant Union a letter notifying Defendant Union that based on decreased revenue and increased expenditures, Plaintiff would either "decrease its firefighting capabilities or transfer much of the primary responsibility for fire fighting and suppression to other potential fire service providers." A true and correct copy of Plaintiff's July 25, 2011 letter to Defendant Union is attached hereto and made a part hereof as **Exhibit A.**

Defendant Martin Directs Volunteers Not to Respond to Fires

15. In response to Plaintiff's July 25, 2011 letter, Mr. Martin, as President of the Defendant Union, transmitted a letter, dated October 26, 2011 to IAFF members who serve as

volunteer firefighters in the Borough. A true and correct copy of Mr. Martin's letter is attached hereto and made a part hereof as **Exhibit B**.

16. In the letter, Mr. Martin directs the volunteers to refrain "from providing volunteer firefighting services to the Borough of Chambersburg."

17. Mr. Martin helpfully acknowledged in the letter that such a request would put the public at risk, stating that many of the members currently "volunteer in areas that are unable to provide adequate means of fire and public safety," but such support is "necessary to protect the jobs of our local members."

18. At the time the letter was distributed, Defendant Union acknowledged that volunteerism in the Borough was dangerously low.

19. Defendant Union is the exclusive bargaining agent of paid firefighters working for the Plaintiff in the Chambersburg Fire Department.

The Current Collective Bargaining Agreement Bars Strikes and Slowdowns

20. The Plaintiff and Defendant Union are parties to a collective bargaining agreement ("CBA"), which agreement is in effect from January 1, 2007 through the first full pay period in 2012. A true and correct copy of the CBA is attached hereto and made a part hereof as **Exhibit C**. Mr. Martin is bound by the terms of the CBA.

21. The CBA prohibits the Defendant Union and its members, including Mr. Martin and Mr. McNew, from engaging in, encouraging, or supporting any action which would involve suspension of or interference with the work of the Chambersburg Fire Department or any other Borough department.

Paragraph 20 of the CBA provides as follows:

20. STRIKES AND SLOWDOWNS PROHIBITED:

The Union agrees that during the term of its Agreement neither it or its officers or members will engage in, encourage, sanction, support or suggest any strikes, slowdowns, mass resignation, mass absenteeism, picketing or other similar actions which would involve suspension of or interference with the normal work of the department or other Borough departments. In the event that Union members participate in such activities in violation of this provision, the Union shall notify those members so engaged to cease and desist from such activities and shall instruct the members to return to their normal duties. Any employee participating in these prohibited activities may be discharged by the Borough.

Union By-Laws

22. The IAFF by-laws prohibit members from volunteering in areas when such volunteerism adversely impacts the interests of the IAFF or its affiliates.

23. If a member violates such by-laws, charges can be filed within the IAFF and discipline can be imposed in the form of reprimands, fines, suspensions, or expulsion from the IAFF.

24. Such discipline can result in the loss of IAFF member benefits including: medical benefits, dental benefits, vision benefits, death benefits, legal services benefits, and various other benefits.

25. The Borough is not a member of the IAFF, is not a party to the IAFF Constitution or By-laws, and therefore is not subject to the requirements of the IAFF Constitution and By-Laws.

The Borough's Volunteer Firefighters Provide Unique Rescue Service to the Borough

26. Several volunteer members of the Franklin Fire Company (the "Franklins"), the largest volunteer fire company in the Borough, who are also IAFF members, received Mr. Martin's letter.

27. The Franklins are the sole company in the Borough with specialized equipment capable of providing rescue assistance to structure fires and vehicular accidents.

28. The closest fire companies with similar rescue capabilities are: the Marion Volunteer Fire Company and the Fayetteville Fire and Rescue Company 7, located nearly six (6) miles from the Borough center, respectively.

29. The Franklins and the Borough are parties to a mutual aid agreement ("Agreement"), whereby the Franklins are contractually required to assist the Borough, through the use of their equipment and trained volunteer firefighters, with firefighting services within the Borough. A true and correct copy of the Agreement is attached hereto and made a part hereof as **Exhibit D.**

30. Upon information and belief, on average, fourteen (14) volunteer members of the Franklins respond to fire calls in the Borough, of which twelve (12) are IAFF members.

Mr. Martin Threatened the Volunteers and Was Disciplined

31. In furtherance of the letter, Mr. Martin, in November 2011, contacted numerous local chapter Presidents of IAFF members who volunteer firefighting services for the Borough.

32. Mr. Martin asked that the Presidents enforce the by-laws of the IAFF and notified them that their members were endangering paid firefighter jobs in the Borough through their continued volunteer efforts.

33. Upon learning of Mr. Martin's letter, the Borough investigated the matter, inviting Mr. Martin to a pre-disciplinary conference.

34. At the conference, Mr. Martin was given an opportunity to rescind the letter, which he refused to do.

35. Based on Mr. Martin's actions in calling for a strike, slowdown, and/or secondary boycott, Town Council of the Borough of Chambersburg voted to suspend him for two hundred and forty (240) hours (10 work shifts), based on actions constituting conduct unbecoming an

officer and neglect and violation of an official duty in violation of the Borough Code and prohibited under the CBA. A true and correct copy of the suspension letter is attached hereto and made a part hereof as **Exhibit E**.

36. Plaintiff filed an unfair labor practice charge with the Pennsylvania Labor Relations Board ("PLRB") against Defendant Union based on Mr. Martin's actions in calling for a secondary boycott and using coercion and intimidation to prevent the use of volunteer firefighting in the Borough, in violation of 43 P.S. § 211.6(2)(d) and (e).

37. A hearing is scheduled before the PLRB on June 18, 2012.

Mr. McNew Threatens the Volunteers

38. Mr. McNew is the Vice-President of the Defendant Union and is a paid firefighter in the Chambersburg Fire Department.

39. Subsequent to the filing of the unfair labor practice charge before the PLRB, Mr. McNew, as Vice-President of the Defendant Union, transmitted a letter, on April 21, 2012, to certain IAFF members serving in the Chambersburg Fire Department, informing them that he was bringing charges against such members, under IAFF by-laws, for, among other things, continuing to volunteer after Mr. Martin's letter was sent directing certain volunteer members of the Chambersburg Fire Department to refrain from providing firefighting services to the Borough. A true and correct copy of the letters in the possession of the Borough are attached hereto and made a part hereof as **Exhibit F**.

40. Upon information and belief, at least eleven (11) IAFF members who volunteer with the Franklins received Mr. McNew's letter.

The Volunteers are Pressured Not to Respond to Fires in the Borough

41. The actions of Defendant Union, Mr. Martin, and Mr. McNew have adversely affected the efficiency of the Chambersburg Fire Department as the Defendants have limited communication with the IAFF members of the Franklins.

42. Such volunteer members within the Department have expressed that they feel harassed as a result of Defendant Union and its officers' actions in coercing and intimidating such members to stop volunteering in the Borough.

43. The Defendants' conduct in threatening volunteer firefighters with sanctions if they respond to fire calls in the Borough is outrageous and in complete and utter disregard for the safety of many lives and much property in the Borough.

44. The Defendants' willful and outrageous conduct amounts to an unconscionable attempt to gain unfair bargaining leverage by placing lives and property at direct risk and violates the express, written covenants of the CBA, as well as the laws of the Commonwealth and all reasonable notions of public policy.

COUNT I – PRELIMINARY AND PERMANENT INJUNCTION

45. The allegations of Paragraphs 1-44 are incorporated herein by reference as though fully set forth.

46. Pending the PLRB's ruling on Plaintiff's unfair labor practice charge filed against the Defendant Union, Plaintiff has no adequate remedy at law.

47. The injunction is necessary to prevent immediate and irreparable harm, the endangering of Borough lives and property that will result by the Defendants' use of a secondary

boycott of the volunteer firefighting services in the Borough, and breach of contract between the Borough and the Franklins, which could not be compensated by damages.

48. By refusing the injunction, Borough lives, property, and public safety overall, would be put in direct danger, and such danger is greater than any harm which would result by granting such injunction.

49. The injunction restores the parties to the status quo that exists until a final adjudication has been made by the PLRB on the unfair labor practice charge brought by the Plaintiff against the Defendant Union for Mr. Martin's actions.

50. The requested relief is reasonably suited to abate the harm caused by Defendant Union, Mr. Martin, and Mr. McNew's actions in using coercion and intimidation to call a secondary boycott, until final adjudication on the merits has been made by the PLRB.

51. The Borough's right to relief is clear because the Defendant Union, Mr. Martin, and Mr. McNew are violating the provisions of the CBA, interfering in the ability of the Plaintiff and the Franklins to fulfill each's contractual obligations under the Agreement, as well as putting the public in direct threat as it affects the Borough's ability to protect Borough lives and property.

52. Plaintiff seeks an order enjoining the Defendants preliminarily and permanently, from using intimidation and coercion to call a secondary boycott in violation of the CBA and in interference of the Agreement in place between Plaintiff and the Franklins.

WHEREFORE, Plaintiff seeks injunctive relief in the form of an Order enjoining the Defendants, preliminarily and permanently, from encouraging, sanctioning and supporting a secondary boycott of volunteer firefighting services in the Borough of Chambersburg.

COUNT II – BREACH OF CONTRACT

53. The allegations of Paragraphs 1-52 are incorporated herein by reference as though fully set forth.

54. The conduct of the Defendants amounts to a breach of Article 20 of the CBA.

55. The conduct of the Defendants places the lives and property of the residents of the Borough in immediate danger and must be abated.

56. The Defendants expressly agreed in the CBA not to encourage, sanction or support any action which results in the interference of the work of the Chambersburg Fire Department.

57. The covenants of the CBA are subject to specific enforcement under the facts presented here. See Shaw Elec. Co. v. International Broth. Elec. Workers, Local Union No. 98, 208 A.2d 769 (Pa. 1965).

WHEREFORE, Plaintiff seeks judgment in its favor, including injunctive relief in the form of an Order enjoining the Defendants, preliminarily and permanently, from encouraging, sanctioning and supporting a secondary boycott of volunteer firefighting services in the Borough of Chambersburg.

COUNT III – DECLARATORY JUDGMENT

58. The allegations of Paragraphs 1-57 are incorporated herein by reference as though fully set forth.

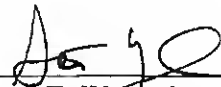
59. The conduct of the Defendants amounts to a breach of the CBA.

60. The conduct of the Defendants is a breach of public safety and places lives and property at undue risk.

WHEREFORE, Plaintiff seeks judgment in its favor, including a declaratory judgment that the Defendants' conduct violates the Collective Bargaining Agreement and injunctive relief, under Pa.R.Civ. P. 1531, in the form of an Order enjoining the Defendants, preliminarily and permanently, from encouraging, sanctioning and supporting a secondary boycott of volunteer firefighting services in the Borough of Chambersburg.

Respectfully submitted,

SALZMANN HUGHES, P.C.



Scott T. Wyland
Attorney I.D. No. 52660
G. Bryan Salzmänn
Attorney I.D. No. 61935
Samuel E. Wiser, Jr.
Attorney I.D. No. 203665
354 Alexander Spring Road
Carlisle, PA 17015
Phone: 717-249-6333

DATED: May 8, 2012

BOROUGH OF CHAMBERSBURG,

Plaintiff

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 1813,
PATRICK R. MARTIN and SCOTT MCNEW
Defendants

v.

: IN THE COURT OF COMMON
: PLEAS, FRANKLIN COUNTY,
: PENNSYLVANIA

:
: CIVIL ACTION - LAW

: DOCKET NO. 2012-1872

PLAINTIFF'S PETITION FOR PRELIMINARY INJUNCTION

AND NOW, comes the Plaintiff, the Borough of Chambersburg (hereinafter "Plaintiff" or "Borough"), and sets forth the following request for a Preliminary Injunction.

1. Plaintiff seeks judgment in its favor, including a declaratory judgment that the Defendants' conduct violates the Collective Bargaining Agreement and injunctive relief, under Pa.R.Civ. P. 1531, in the form of an Order enjoining the Defendants, preliminarily and permanently, from encouraging, sanctioning and supporting a secondary boycott of volunteer firefighting services in the Borough of Chambersburg.
2. The Chambersburg Fire Department is composed of both paid and volunteer firefighters.
3. The Borough has four volunteer fire companies that are a part of the Chambersburg Fire Department, including the Franklin Fire Company Number 4 (hereinafter the "Franklins").
4. The Borough has notified Defendant Union that, in the wake of increased expenditures and decreased revenue, the Borough would be either "decreasing its firefighting capabilities or transfer much of the primary responsibility for fire fighting and suppression to

other potential fire service providers.” A true and correct copy of the notification letter is attached hereto and made a part hereof as **Exhibit A**.

5. In response to such notification, Defendant Union, through its President, Patrick R. Martin (hereinafter “Mr. Martin”), and Vice President, Scott McNew (hereinafter Mr. McNew), have transmitted letters to several IAFF members who volunteer within the Chambersburg Fire Department, coercing and intimidating such members through threats of discipline under IAFF by-laws to engage in a secondary boycott of volunteer fire services in the Borough of Chambersburg. A true and correct copy of the letters are attached hereto and made a part hereof as **Exhibit B**.

6. Twenty-one (21) of the active members of the Franklins are IAFF members due to being paid firefighters in other jurisdictions.

7. On average, fourteen (14) volunteer members of the Franklins respond to fire calls in the Borough, of which twelve (12) are IAFF members.

8. The volunteer members of the Chambersburg Fire Department who are IAFF members due to their employment in other jurisdictions are the most highly trained volunteers within the Chambersburg Fire Department.

9. The Franklins provide the only rescue squad within the Borough, and generally the rescue squad consists of volunteer IAFF members.

10. The rescue squad’s primary duty on a fire scene is to remove persons from burning structures.

11. The closest fire companies with similar rescue capabilities are the Marion Volunteer Fire Company and the Fayetteville Fire and Rescue Company 7, located nearly six (6) miles from the Borough center, respectively.

12. The Borough and Defendant Union are parties to a collective bargaining agreement (hereinafter the "CBA"), which prohibits Defendant Union, or its officers, including Mr. Martin and Mr. McNew, from encouraging, sanctioning or supporting a strike, slowdown or any similar action which involves the suspension or interference of the normal work of the Chambersburg Fire Department. Mr. Martin and Mr. McNew, as members of Defendant Union, are bound by the terms of the CBA. A true and correct copy of the CBA is attached hereto and made a part hereof as **Exhibit C**.

13. The Borough filed an unfair labor practice charge with the Pennsylvania Labor Relations Board ("PLRB") against Defendant Union based on Mr. Martin's actions of calling for a secondary boycott and using coercion and intimidation to prevent the use of volunteer fire services in the Borough, in violation of the Pennsylvania Labor Relations Act (hereinafter "PLRA").

14. A hearing is scheduled before the PLRB on June 18, 2012.

15. If Defendants continue to encourage, support, and sanction a strike, slowdown, or secondary boycott of volunteer firefighting services within the Chambersburg Fire Department, whether through threats and/or intimidation, in violation of the CBA and Section 6(2)(d) of the PLRA, and volunteers refrain from providing fire services to the Chambersburg Fire Department, critical fire and rescue services in the Borough will be diminished and delayed, thereby placing Borough lives and property in immediate danger of imminent and irreversible harm, thereby resulting in irreparable harm.

16. The Defendants' conduct in threatening volunteer firefighters with sanctions if they respond to fire calls in the Borough is outrageous and in complete and utter disregard for the safety of many lives and much property in the Borough.

17. The Volunteers who received the letters are being dissuaded from responding to fire calls in the Borough as a result of the letters. See Affidavits of James Hull and Mark Trace, attached hereto as **Exhibits D and E**.

18. The attached Affidavits of James Hull, the Chief Administrative Officer and company President of the Franklin Fire Company, and Mark Trace, Chief Operations Officer, provide testament to the immediate nature of and need for urgent relief by stating among other matters in relevant part: "As a result of Mr. Martin and Mr. McNew's letters and actions, there is great tension among the Chambersburg Fire Department when Station 1 and Station 4 jointly respond to a fire call, and the IAFF Local 1813 members refuse to communicate with the members of the Franklin Fire Company." (See Exhibit D Paragraph 18 and Exhibit E Paragraph 19) and "this lack of communication extends to emergency incident responses" (See Exhibit D Paragraph 19 and Exhibit E Paragraph 20).

19. Because Defendant Union, Mr. Martin and Mr. McNew are violating the CBA and the PLRA, and most importantly, putting the Borough and its residents in immediate danger of losing lives and property, the burden of refusing the injunction is far greater than granting the injunction.

20. This preliminary injunction will restore the parties to the status quo until a final adjudication has been made regarding the unfair labor practice currently pending before the PLRB brought by the Plaintiff against the Defendant Union for Mr. Martin's actions.

21. The Defendants' willful and outrageous conduct amounts to an unconscionable attempt to gain unfair bargaining leverage by placing lives and property at direct risk and violates the express, written covenants of the CBA, as well as the laws of the Commonwealth and all reasonable notions of public policy.

22. A grant of this preliminary injunction will be in the public interest, as it will allow the Chambersburg Fire Department to continue its current operations through the use of all available volunteer firefighters to provide essential firefighting services to Borough residents and property.

23. The Plaintiff has a reasonable likelihood of success on the merits because Section 6(2)(d) of the PLRA, 43 P.S. § 211.6(2)(d), prohibits a labor organization, or the officers of a labor organization, from engaging in a secondary boycott, or using intimidation or coercion to prevent the use of volunteer firefighting services.

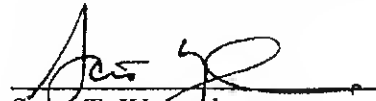
24. The Plaintiff has a reasonable likelihood of success on the merits because Section 20 of the CBA clearly prohibits the Defendants from engaging in such conduct.

25. The burden on the Defendant Union, Mr. Martin, and Mr. McNew of complying with the preliminary injunction will be immeasurably small, the only requirement being that neither the Union, nor its officers, may use coercion or intimidation to eliminate the use of the most highly trained volunteer firefighters in the Borough, and the Chambersburg Fire Department can continue to rely on all available volunteer firefighters as it has done.

WHEREFORE, Plaintiff seeks the imposition of a temporary restraining order and/or a preliminary injunction, under Pa.R.Civ.P. 1531, in the form of an Order enjoining the Defendants, preliminarily and permanently, from encouraging, sanctioning and supporting a secondary boycott of volunteer firefighting services in the Borough of Chambersburg.

Respectfully submitted,

SALZMANN HUGHES, P.C.



Scott T. Wyland

Attorney I.D. No. 52660

G. Bryan Salzmnn

Attorney I.D. No. 61935

Sam E. Wiser

Attorney I.D. No. 203665

354 Alexander Spring Road

Carlisle, PA 17015

Phone: 717-249-6333

DATED: May 8, 2012